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LIABILITY OF ATTORNEYS FOR NEGLIGENCE.

With the rapid increase in the number of statutes and decisions it is reassuring to read the declaration of the Court of Appeals of England that it might be too much to expect of attorneys that they should know the detailed requirements of every statute of the realm. This declaration was made in the recent case of Flether v. Jubb, 122 L. T. Rep. 258, (1920) 1 K. B. 275, where, however, the Court declared that there was one class of laws which attorneys must know at their peril, to-wit: laws limiting the bringing of a cause of action.

In this case plaintiffs employed defendant's firm of solicitors to bring an action against a municipality for negligence in the operation of a municipal tram-car resulting in a collision with plaintiff's wagon. Defendant made a demand for a settlement and received an offer of £20. He refused this offer and demanded £75. The municipality refused the demand. Defendant then waited ten months before bringing his action but was defeated by a statute limiting the time when an action could be brought against a municipality. The plaintiff brought suit against his solicitor for negligence. The lower court held the defendant not liable on the ground that he had been misled by supposing that the municipality had admitted liability, but the Court of Appeal set the judgment aside on the ground that a solicitor must protect the right of a client to bring his action from any act or delay on his part.

In this country the general rule of liability of an attorney for negligence is limited by the rule of reasonableness. He is required to possess only a "reasonable knowledge of the laws" and to "exercise only reasonable skill." In 6 Corpus Juris 696 the rule is stated even more loosely and many authorities sustain the text: "If an attorney is *fairly* capacitated to discharge the duties ordinarily incumbent upon one of his profession, and acts with a proper degree of attention, with reasonable care and to the best of his skill and knowledge he will not be responsible."

It seems to us that the courts should properly make a distinction between errors of judgment and errors of practice. As the English Court of Appeal well says, no lawyer can be expected to know all the law nor, what is more important, to know what some court will declare the law to be. For such errors an attorney should not ordinarily be liable. "The law is a science," declares a Kentucky Court," but an imperfect one, for the reason that it depends for exemplification and enforcement upon the imperfect judgments and consciences of men. Therefore when the attorney has used ordinary care in acquainting himself with the facts, his misjudgment as to the law thereon will not generally render him liable. Humboldt Bldg. Assn. v. Ducker, 111 Ky. 759, 64 S. W. 671, 23 Ky. L. 1073.

In addition to errors of judgment and want of skill there is the case of ordinary negligence. In such cases there is no error of judgment. Nor is there any want of skill. The law is free from ambiguity and the attorney is well informed both as to the particular rule of law applicable to his case and the practice to be observed to protect his client's rights. But he is simply careless; his office-management is defective and he does not keep himself properly informed of the steps necessary to be taken and when to take them. In such case the Court should hold the attorney to a high degree of care. The principal case (supra) is an illustration in point. In that case the solicitor knew the law as to the liability of the municipality, he knew how and when to bring the action but he delayed to bring it claiming that he was misled by what he erroneously thought was an admission of liability on the part of the municipality. He was

properly held liable to a high degree of care. The cases in this country are clear that attorneys will be held liable for negligence in matters involving no element of judgment or want of skill (knowledge of practice and fixed rules of law), and the only way an attorney can protect himself in such cases is to throw the responsibility for delay or failure to act on the client.

Instances of negligence for which attorneys have been held liable involve in most cases the elements of delay and simple carelessness. For instance an attorney was held liable for not delivering an execution to an officer within thirty days after judgment as the statute required (Phillips v. Bridge, 11 Mass. 242); for laying the venue of an action in the wrong county (Kemp v. Burt, 4 B. & Ad. 424, 24 E. C. L. 189); for neglecting to procure an allowance of a claim in proper time to participate in the assets of an estate (Stevens v. Walker, 55 Ill. 151); for failing to sue out a *scire facias* on time. (Dearborn v. Dearborn, 15 Mass. 316.) In the Dearborn case the Court held that if the attorney desired to protect himself in the matter he should have consulted his client and requested specific instructions.

It should be borne in mind that the great mass of the rules of law are fixed and a failure to know these fixed rules is not a mere error of judgment but a distinct want of skill. Thus an attorney is presumed to know what action is necessary to hold an indorser. Gott v. Brigham, 41 Mich. 227, 2 N. W. Rep. 5. An attorney must therefore know all the statute laws of his state and the changes therein; and also all rules of the common law which are well known, generally accepted and clearly defined. Hillegrass v. Bender, 78 Ind. 225. Failure to know such rules of law constitute want of skill for which an attorney should be held liable.

In all cases like the principal case however, there is only the question of simple neglect and it is important that in such cases attorneys should understand that their liability is clear and certain; on the other hand such cases of pure negligence and carelessness should be separated from cases involving errors of judgment and want of skill. In the former case there is no liability and in the second case liability should depend on the determination of what is ordinary skill in the community in which the attorney practices.

NOTES OF IMPORTANT DECISIONS.

IS PERFORMANCE OF A CONTRACT EXCUSED BY ACT OF GOD.—There is nothing in the law or the decisions (except dicta) that gives any justification for the statement that an Act of God will excuse performance of an absolute undertaking to do a thing which at the time of the contract is not inherently impossible of being done. For this reason we are not inclined to agree with the Supreme Court of Nebraska in its decision in the recent case of Matousek v. Galligan, 178 N. W. 510, holding the following instruction to be good law:

"You are instructed that an 'act of God' is a part of every contract, whether it is written therein or not, and if a party is prevented from performing his contract directly and exclusively by an act of God, the law excuses him, and he cannot be held for any injury or damage in the non-performance of the contract."

In this case the parties entered into the following written contract:

"April 5, 1917. This is an acknowledgment of $150 payment on about sixty tons of hay at $9.25 per ton delivered in barn or cars at Atkinson, Neb., good No. 1 merchantable hay, to be delivered on or before May 10, said hay sold to Joseph Matousek."

Defendant in his answer to the suit on the contract admitted that he received $150 from plaintiff, and also that he had not delivered the hay, or any part of it. Defendant further claimed that the hay was situated on land seven miles south of Atkinson, which fact was well known by plaintiff at the time they made the contract, and that almost immediately after the contract was made there came frequent and unusual storms and rainfall, making it impossible to bale and deliver No. 1 merchantable hay. He claims performance was prevented by an act of God.

The contract at the time of performance was possible of performance; it is absolute in terms; it did not refer to any particular hay then in existence and contained no exceptions or conditions.

The general rule that subsequent impossibility of performance does not excuse performance has certain well defined exceptions: First, where the event which, occurring subsequent to the contract, is not reasonably within the intention of the parties at the time of the contract. Chicago, etc., R. R. Co., v. Hoyt, 149 U. S. 1, 13 Sup. Ct. Rep. 779; Krause v. Crothersville School Town, 162 Ind. 278, 70 N. E. 264, 102 Am. St. Rep. 203. Second, where the contract specifies a particular thing then in existence in respect to which the promises are made and whose continued existence is necessary to performance. In such a case there is an implied condition that the particular thing shall continue to exist.

Neither of these exceptions applies to the contract here under consideration. The fact that a farmer who is growing his own wheat, oats, hay, etc., contracts to sell a certain amount does not necessarily imply that he sells any particular wheat, oats, hay, etc., growing on his own land and he would not be required under the terms of such a contract to deliver the crop raised on his own farm but might go into the open market or to a neighbor and secure the particular quantity of the crop he agreed to sell.

Under such circumstances one who unqualifiedly promises to deliver a quantity of hay on a day certain at a price specified should not be excused from performance because rain damaged his own hay crop. In the recent case of Berg v. Erickson, 234 Fed. 817, it was held that a resident of Kansas who agreed to furnish one thousand cattle, "plenty" of good grass, salt and water during grazing season, was not relieved of liability for performance by a drought which burned up his own and all surrounding pastures. We presume the court believed that a resident of Kansas should have been familiar enough with possibility of droughts to have anticipated that contingency.

The courts are inclined to be too lenient with those who enter into absolute undertakings on which the other parties to the contract have a right to rely. If one does not wish to agree to do a thing at all events it is easy for him to exclude contingencies which are liable to happen and for that reason should be presumed to be within the intention of the parties at the time they enter into their contract.

INCREASING CAPITAL STOCK DOES NOT GIVE STOCKHOLDER RIGHT TO HIS PROPORTIONATE SHARE UNTIL STOCK IS ACTUALLY ISSUED.—An interesting application of the pre-emption right of a stockholder in new stock issued by the company is found in the case of Hammer v. Cash, 178 N. W. 465, in which the Supreme Court of Wisconsin held that where an increase of stock was authorized and part of it issued that part already issued could be canceled and returned to the treasury at the discretion of the directors. The argument of defendant's attorney was that as soon as the increase in capital stock was voted defendant was entitled to his proportionate part and therefore was entitled to retain the stock previously issued to him. To this contention the court replied:

"The amendment of the articles of the corporation increasing its capital stock merely authorizes and empowers the corporation to issue increased stock in such amounts and at such times as may thereafter be determined by proper corporate authority. It is under no obligation to issue the stock merely because it has acquired power and authority so to do. Articles of incorporation are frequently so amended as to increase the amount of the authorized capital stock of a company in such amounts as will meet its contemplated requirements for some time in the future, without any thought that the whole amount of such increase shall at once be issued. May a stockholder, immediately upon an amendment of such character becoming effective, demand that his proportionate share of the entire amount of such increase be issued to him? Bearing in mind that this right is accorded to the stockholder in order that he may maintain his relative voice in the affairs of the corporation, it is manifest that the reason upon which the principle is founded is fully satisfied if he is permitted to purchase his relative proportion of such amount of the stock as is authorized is to be issued. To illustrate, a corporation may so amend its articles as to provide for an increase of its capital stock in the sum of $100,000. From the mere amendment of the articles, however, it does not follow that the entire amount of such increase is to be issued. Whether any part of such increase is to be issued, and when, and for what amount, rests with the corporation after it has acquired the authority so to do by the amendment to its articles. When the corporation decides to issue $50,000 of the authorized increase, the right of the stockholder is fully protected by permitting him to purchase his proportionate share of such $50,000 proposed to be issued, and this, we think, is as far as the rule extends."

The court further held that since the project for which the increase was voted (the building of an extension to a railway) was abandoned, the president and secretary had no authority to sell the stock and that therefore such sale was void.

STATUS OF PERSONS COASTING IN PUBLIC HIGHWAYS.

Introductory—Public highways are for use by the public, for travel for purposes of pleasure as well as business, for short trips as well as long journeys. One may lawfully drive his automobile or his carriage and four or his ox-cart from his residence to the residence of his next-door neighbor, and with equal, but no greater right, from New York to San Francisco.

The fundamental idea of a highway is not only that it is public for free and unmolested passage thereon by all persons desiring to use it, but the use of a highway is not a privilege, but a right, limited by the rights of others, and to be exercised in a reasonable manner.[1]

The primary and dominant purpose of the establishment of highways is to facilitate travel and transportation. They belong from side to side and end to end to the public, that the public may enjoy the right of traveling and transporting their goods over them.[2]

Coasting as a Customary Use—In determining the rights and liability of persons coasting in the public highways great stress has been laid upon the question of "customary use of the highways." Even admitting, however, that such use of a highway periodically, when the condition of the weather and the highway at the place made use of is permissible and inviting, is not a customary use, and that it does interfere to some extent with the use of the highway by usual and customary methods, is it in any sense unlawful for that reason? Has the right of sleighing parties, seeking pleasure only, to the use of the highways ever been questioned, although such use is periodical only, and depends upon climatic and highway conditions? Coasting in the highways antedates their use by automobiles, yet the latter use was not declared illegal when first introduced because it was not then usual and customary to travel in automobiles.

If such use of the public ways were new and novel, it could not be declared illegal on that account alone. Nor could it be so held because it interferes to some extent, that is, to a reasonable degree, with the use by other and more common methods.

"When the highway is not restricted in its dedication to some particular mode of use," said Chief Justice Cooley,[3] "it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new methods of use whenever it is found that the general benefit requires them; and if the law should preclude the adaptation of the use to the new methods, it would defeat, in greater or less degree, the purpose for which highways are established."

Any methods of travel may be adopted by individual members of the public, whether it is an ordinary or an extraordinary method of locomotion, if it is not of itself calculated to prevent a reasonably safe use of the highways by others.[4]

In the absence of any limitation imposed by lawful authority the highways may be used for any and every kind of public travel and transportation which the necessities or convenience of the public may require. This use, of course, may be modified as public convenience or necessity may from time to time demonstrate to be need-

(1) Terrill v. Walker, 5 Ala. App. 535.
(2) Terrill v. Walker, 5 Ala. App. 535; Cincinnati Inclined Plane R. Co. v. Telegraph Assn., 48 Ohio St. 390, 426.
(3) Macomber v. Nichols, 34 Mich. 212, 217, 22 Am. Rep. 522.
(4) Chicago v. Banker, 112 Ill. App. 94, 97.

ful.[5] Time and necessity, as well as locality, being important elements in determining the character of any particular use of a highway.[6]

"Almost any proper use of a highway may under some circumstances impede the use by another, and possibly render it dangerous. The appearance of any unusual object in the streets may have some tendency to add to the dangers of travel by means of horses or other animals, and there is always more or less danger that a high spirited horse, or indeed any other horse, may become unmanageable, and people who are using the highway be exposed to risks in consequence. But it does not follow that the driver of such a horse is responsible for the consequences because of his bringing him into the street impeding or rendering dangerous the travel by others. The question is one of reasonable use and reasonable care, and if these are observed he is not chargeable."[7]

"The sport itself is not entirely foreign to the purposes for which public ways are established; for the use of these ways for pleasure riding is perfectly legitimate, and coasting is only pleasure riding in a series of short trips repeated over the same road, not differing essentially from the riding in sleighs, of which so much is seen on some of the streets of northern cities."[8]

In a Maine case it was said that, like racing or playing ball, sliding downhill is not an unlawful exercise or game, but that the streets are not proper places for such recreation, although one engaged in it is passing along the highway, in one sense, as any traveler would.[9]

The "law of the road" has been held to apply to the use of public highways for coasting,[10] but it has been held that such law does not apply to an unusual and extraordinary use of the highways, such as moving a building.[11]

The question of the right to coast on a public highway, therefore, does not depend upon whether or not such use is usual and customary, but upon whether it unreasonably interferes with other modes of locomotion. Necessarily, it does interfere with other methods of use, and renders the highway less safe for use by others, but it cannot be condemned as long as it remains within the bounds of reason in this respect.

As a Nuisance or Wrongful Act—Coasting in a public street of a city is not a nuisance *per se*. "We cannot concede that coasting upon a public street is an illegal act, so as to constitute it a public nuisance. Public highways are intended for pleasure uses as well as business uses; and it is difficult to see why a sled coasting downhill should be said to be a public nuisance any more than a sleigh drawn by horses going down the same highway."[12]

"It could not be seriously contended that for the municipal authorities to permit coasting upon such a street would be to license a public nuisance. On the contrary, as the sport is healthful and exhilarating, it seems eminently proper, if the street is not put to other public use, that this diversion be allowed, if not expressly sanctioned."[13]

However, such use of a highway, as any other use, may be made to constitute a nuisance. It has been declared that a large sled loaded with several persons coasting down an icy street after dark, endangers the safety of every traveler upon the highway in its course, is inconsistent with the purposes for which the street was

(5) Hamilton & L. El. Tr. Co. v. Hamilton, 1 Ohio St., p. 366.

(6) Graves v. Shattuck, 35 N. H. 257, 69 Am. Dec. 536.

(7) Chief Justice Cooley in Macomber v. Nichols, 34 Mich. 212, 215, 22 Am. Rep. 522.

(8) Justice Cooley in Burford v. Grand Rapids, 53 Mich. 98, 18 N. W. 571, 51 Am. Rep. 105.

(9) McCarthy v. Portland, 67 Me. 167, 24 Am. Rep. 23.

(10) Terrill v. Virginia Brewing Co., 130 Minn. 46, 153 N. W. 136.

(11) Graves v. Shattuck, 35 N. H. 257, 69 Am. Dec. 536; Brooks v. Hart, 14 N. H. 307; Norris v. Litchfield, 35 N. H. 271, 69 Am. Dec. 546.

(12) Lynch v. Public Service R. Co., 82 N. J. L. 712, 83 Atl. 382, 42 L. R. A. (N. S.) 865. See also, Burford v. Grand Rapids, 53 Mich. 98, 18 N. W. 571, 51 Am. Rep. 105; Jackson v. Castle, 80 Me. 119, 13 Atl. 49.

(13) Burford v. Grand Rapids, 53 Mich. 98, 18 N. W. 571, 51 Am. Rep. 105.

made and for which it is used, and is *per se* a nuisance.[14]

For seven boys to coast down a hill on one sled, at such a high rate of speed as would necessarily follow, and to run into a city street at the foot of the hill, was held to be a wrongful act.[15]

And in a New York case, it was said that the construction and maintenance of a toboggan slide across one of the principal streets of a populous city, with little or no protection against collision between those riding thereon at a very high rate of speed and travelers passing along the street, is a wrongful, dangerous, and negligent act.[16]

When Violative of Statute or Ordinance—The fact that one is coasting in a highway in violation of a statute or ordinance does not preclude him from recovering for injuries inflicted by the negligence of other users of the way. In such a case the violation of law is a mere incident, and not a proximate cause of the injury; there being no causal connection between the two.

In a Missouri case it is held that the driver of an automobile approaching a street intersection in a thickly populated district at a rapid rate of speed owes a boy who is coasintg in the street in violation of a statute, not only the duty to use ordinary care to avoid injuring him after his peril is actually discovered, but also the duty to exercise ordinary care to keep a lookout and discover his presence.[17]

Nor is he prevented from recovering because his act of coasting constitutes a public nuisance.[18]

(14) Rensch v. Licking Rolling Mills Co., 118 Ky. 369, 80 S. W. 1168.

(15) Eastburn v. United States Express Co., 225 Pa. 33, 73 Atl. 977.

(16) Hayden v. Clarke, 56 Hun 645, 10 N. Y. Supp. 291.

(17) Rowe v. Hammond, 172 Mo. App. 203, 157 S. W. 880. But see Osgood v. Maxwell, N. H., 95 Atl. 954.

(18) Lynch v. Public Service R. Co., 82 N. J. L. 712, 83 Atl. 382.

A municipality is not liable to answer in damages to one who is injured while coasting in one of its streets when such use of the streets is forbidden by an ordinance. although the city officers habitually neglect to enforce the ordinance.[19]

Liability of Municipality for Injuries Caused by Coasting—A municipal corporation is not liable for failure to prevent coasting in its streets, to one who is injured by collision with a sled being so used.[20]

This is true although the street in question had been used for several years for coasting, and there was an ordinance in effect forbidding such use.[21]

In the absense of a statute creating such liability, a city is not liable for injury to a pedestrian incurred by being run against by a coaster on a footpath in a common used as a place of recreation and public resort, the path not having been laid out as a highway and not being a part of the city's system of streets, although the city permitted boys to coast on the path, and had fitted the path for such coasting by building a bridge across it at an intersecting path and by turning water onto it to freeze and render it smooth.[22]

It has also been held that a city is not liable for injuries to a pedestrian received by reason of the slippery condition of a sidewalk, and by being run against after

(19) Fluckiger v. Seattle, Wash., 174 Pac. 456, L. R. A. 1918F 780.

(20) Lafayette v. Timberlake, 88 Ind. 330; Dudley v. Flemingsburg, 115 Ky. 5, 72 S. W. 327, 60 L. R. A. 575, 103 Am. St. Rep. 257, 1 Ann. Cas. 958; Altrater v. Baltimore, 31 Md. 462; Brumbaugh v. Bedford, 23 Pittsb. L. J. N. S. 462; Toomey v. Albany, 14 N. Y. Supp. 572, 38 N. Y. S. R. 91; Wilmington v. Vandergrift, 1 Marv. (Del.) 5, 29 Atl. 1047, 25 L. R. A. 538, 65 Am. St. Rep. 256; Weller v. Burlington, 60 Vt. 28, 12 Atl. 215; Faulkner v. Aurora, 85 Ind. 130, 44 Am. Rep. 1. For the law of Maryland, see Taylor v. Cumberland, 64 Md. 68, 20 Atl. 1027, 54 Am. Rep. 759.

(21) Stevenson v. Phoenixville, 1 Chester Co. Rep. 113.

(22) Steele v. Boston, 128 Mass. 583.

dark by a boy sliding thereon, at a point where boys had been in the habit of sliding without interruption from the city authorities.[23]

Sliding in the public streets does not constitute an "obstruction" of the streets, so as to render the city liable to a traveler for injuries received by reason thereof.[24]

Nor does coasting constitute an "insufficiency or want of repair,"[25] nor a "defect or want of repair," in the streets so used.[26]

Power to Exclude Coasters from Use of Highways—The right to use the public highways is not an absolute and unqualified right, but is subject to limitation and control by proper exercise of the police power when necessary to provide for and promote public safety and well being.[27]

In an early Illinois case it was declared that, "a street is made for the passage of persons and property, and the law cannot define what exclusive means of transportation and passage shall be used."[28]

It has been decided that the regulation of the use of the public highways, even to the exclusion of certain classes of vehicles from particular roads and places, is a proper exercise of the police power for the safety of the public.[29]

On the other hand, it has been held, in a case involving the right of motorists to use the highways, that while the state may regulate the use of automobiles upon its highways, it can no more prohibit their use thereon than it can prohibit the use of lumber wagons.[30]

(23) Shepherd v. Chelsea, 4 Allen 113.
(24) Ray v. Manchester, 46 N. H. 59, 88 Am. Dec. 192.
(25) Schultz v. Milwaukee, 49 Wis. 254, 5 N. W. 342, 35 Am. Rep. 779; Hutchinson v. Concord, 41 Vt. 271, 98 Am. Dec. 584.
(26) Pierce v. New Bedford, 129 Mass. 534, 37 Am. Rep. 387; Hutchinson v. Concord, 41 Vt. 271, 98 Am. Dec. 584.
(28) Moses v. P., F. W. & C. R. Co., 21 Ill.
(27) State v. Phillips, 107 Me. 249. 516, 523.
(29) State v. Phillips, 107 Me. 249; Com. v. Kingsbury, 199 Mass. 542.
(30) State v. Gish, 168 Ia. 70.

The question of right to use the highways resolves itself into the question of reasonable use and reasonable care, and if these exactions are met it is thought that it is beyond the power of the state to prohibit such use. However, a proper use and care does not depend alone upon the character of the vehicle and the degree of care exercised in its operation, but to a great extent upon the character of the uses of the ways by the public generally. It might be unreasonably dangerous to the public to permit coasting in certain ways, or even any of the ways in a particular community, at all.

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LAWYER'S OFFICE SYSTEMS—REPORT OF A COMMITTEE OF THE IOWA BAR ASSOCIATION.

It is time the legal profession was waking up to the need of more modern methods in the law office. In all lines of industry and business great strides have been made in the last few years in efficient management. Closer competition, increased costs, higher prices and wages, and now war demands, have all conspired to force greater efficiency in business methods. But the average law office is the same old conservative institution.

All around us, in every line of business, and in every walk of life, we find modern tools and machinery, up-to-date methods, and progressive ideas forging to the front. Yet the law office remains an archaic institution. In spite of the progress on every side, there are today law offices where the telephone is on the wall in the outer office, and every time the bell rings the stenographer has to get up to answer the call, call the lawyer out to do his telephoning—repeating this many times, day after day,

week after week, year after year, a useless and expensive waste of time and energy.

There are lawyers today still using the old-fashioned letterpress copy book, with its mussy, tedious copying process, and with replies to important correspondence scattered through many bound volumes, and the corresponding letters from clients packed away in bulging, dusty transfer files. There are lawyers today using the old-fashioned bound dockets and indexes, that are cumbersome and weighed down with deadwood.

There are lawyers today who keep their papers in folded envelopes, folding and unfolding them time and time again, filing them away in dusty pigeonholes, where they may be found if they search long enough. There are others who open their mail, put each letter back in the envelope again, and every time the letter is referred to, back it goes into the same envelope, thus needlessly repeating the folding and an opening process again and again, with its consequent loss of time and energy.

There are law offices today still using the old-fashioned bookkeeping method that was invented and used in the counting house when clerks sat on high stools before big ledgers and wrote with quill pens. There are lawyers who still insist upon using antiquated, roundabout methods, and who dribble along with office routine, and are bound hand and foot by the rule of thumb method which they learned from their fathers, grandfathers, or early employers, and, deep in the rut, refuse to even look at the paved road of progress within easy reach.

Not long ago a business man went into a law office and found the head of the firm posting the office books. He personally did the bookkeeping for the firm, and it was a prosperous and reputable firm of attorneys at that. But think of it—a $50 a day man dawdling over work that any $15 a week girl could do as well. Yet that is typical of many offices, where brainy lawyers, ground down by routine tasks, never get above mediocrity in their profession, and go to seed without half a chance to show their real ability.

As Herbert Kaufman so well says: "The engineer, who tries to be fireman, conductor, and brakeman as well, is headed for a smash. Hold the throttle—watch the gauge and signals. Stick to your cab; keep the schedule."

Many a lawyer of ability is held down by office routine and the little things in practice. They lack the foresight and the courage to get out of the rut. Efficient scientific management has lifted the executives in big business to a high plane, where their brains and ability are unhampered and can get results. It has paid in business. It pays just as much in a law office.

A lawyer is selling the product of his brains to his client. The lawyer, like the manufacturer or the mechanic, is paid for the amount of work he turns out. If, then, the lawyer as the *producer* is unhampered by the details of his business—if the purchasing, manufacturing, distributing, and accounting departments, so to speak, are taken care of by his office organization—then it stands to reason that the lawyer produces more, both in quality and quantity, and his brain is free to concentrate upon the vital things in his practice.

But we so often hear the remark from the uninformed lawyer. "That is all right in business, but the law practice is *different*—we can't do the things they do in business." Why not? Leaving out the *advertising* feature of business, a lawyer *sells* his services, just as the merchant sells his goods. The good lawyer is a good *salesman* without knowing it. If he gives *service* the people will come to him, just as they will flock to the merchant who gives service.

Is it unethical for a lawyer to have a business system that helps him to do his work with neatness and dispatch? Is it unprofessional for a lawyer to have a

smooth working office organization, that assists him to give satisfactory service to his clients? Is it contrary to the *traditions of the profession* for the lawyer to use an office system that enables him to be punctual in fulfilling his engagements, prompt in getting out his work in accordance with his promises, and vigorously effective in his work as counsel or in court? If it is then it is high time the canons of ethics and the traditions of the profession were changed.

Someone has said that "the most valuable things any man knows were learned outside of the beaten track of his trade." From the very nature of his work, the lawyer comes in close touch with his clients in every line of business and in all phases of life. This breadth of experience is the lawyer's great asset, and is one of the great factors in making the lawyers the leaders in every community. And yet, while all lawyers delight in public in describing the wonders of science and invention, it never seems to dawn upon their minds that science can also work wonders in that little old law office.

The lawyer's wife has her electric stove, modern electric sweeper, electric hair curler, percolators, toasters, and everything new and modern to assist herself and servants, while the head of the house boasts that he believes in lightening the burdens of home management. Yet the same lawyer slaves along in his office with a typewriter and a fountain pen.

Most lawyers consider that, when they have a nicely furnished office and a good *filing system*, that this is as far as a law office can go. In fact, that is only the beginning. The law office where everything is standardized for the purpose of maximum production, and where the work is expedited by the pressure of electric buttons and the turning of levers, is no longer a fiction. It will pay the lawyer, who prides himself on being efficient, to use some foresight.

The average lawyer's desk is like a funnel, through which the business of the office passes, and, as it piles up at the large end, he wonders why it clogs at the small producing end. "My work is never done," says the busy lawyer, "the day isn't long enough to get half my work done." And yet efficiency stands ready to double the hours of your day, by making it possible to do twice the work with less effort.

No one can provide a ready-made system for another. It is as impracticable as providing him with a ready-made character. His system must be an outgrowth of his business, just as his character is formed by his habits and thoughts. Any man, however, who is sincerely desirous of progressing and accomplishing results, may benefit by the researches and results of others, and apply such results to his own business, and work out his own solution of the problem of practical efficiency.

Every man must lay out his scheme of work for himself. Too close and mechanical a schedule will break down under strain. It must be flexible. A brain worker must have a more flexible schedule than a routine worker, as there are constantly special demands on his time. But all workers must plan for systematic work to gain the most efficiency. Aimlessness is the thief that steals the lawyer's time.

The average lawyer would resent the imputation that he was dawdling away the best part of his time. But it's true, and any lawyer who keeps no time record will be astounded at the time wasted without knowing it. Progressive lawyers keep a record of their time, and it pays in increased capacity and increased revenue. If to this is added a careful planning of the day's work and carrying out that *schedule* still more wonderful results will be obtained. Any lawyer who works on this plan will testify that it has saved him hours every day and greatly increased his income.

More important still, such a system will enable the lawyer to plan his work to the

best advantage, to get the rush or important work out on time, to prepare ahead for approaching work, instead of waiting for it to pile up at most inopportune times. It relieves him from the worry, bustle, turmoil, and grief of an unorganized office. These time records and schedules should also be used by all members of the office organization. This gives a basic system that will enable him to stop the leaks, wastes, and inefficiencies that hide in every corner. It brings order out of chaos, and knowledge where before ignorance was an expensive bliss.

The cynical busy lawyer says that it is foolishness to order our life by schedules, plans, charts, and hard and fast rules and restrictions. These utensils are the preliminaries to real efficiency. A person learning to play chess must first learn the rules of the game and practice until he becomes proficient. Then he can lay aside the rules, that at first were indispensable for every move. So the records of efficiency are the rules that show us how to play the game efficiently, and, when we once know how, we do not have to depend upon them longer.

Efficiency is an Aladdin's lamp. If you have faith as a grain of mustard seed, you can rub the polished surface of the lamp, and system will come forth with a thousand effective hands and brains, that will lighten your burdens and help you with your work. But, like all magic, there must be some common sense back of it. *Work—Work—Work* is the only real key to success. All the system in the world will be of no avail without conscientious effort. But it is the glory of scientific efficiency that it raises drudgery to the higher level of intelligent effort. Work, well planned, well directed, well executed, and well remunerated, becomes a pleasure.

There are eight fundamental requirements for an efficient law office:

(1) *Standardize* letters, pleadings, files, forms, methods, and office operations.

(2) *Delegate to subordinates* all routine work and all possible standardized minor tasks.

(3) *Plan and schedule* each day's work in the office, and then *dispatch* the work according to schedule.

(4) Reduce all standardized routine and methods to writing as *Standard Practice Instructions.*

(5) Use a *modern bookkeeping system,* that gives exact information at all times as to the condition of the business.

(6) A convenient, well-lighted, well-ventilated *office,* with healthful, congenial environment for the office force.

(7) Use all *lavor-saving devices* and machinery suitable to the size of the business.

(8) *Hard work*—but always *intelligent work.*

In this brief report we have time for only general observations. But we desire to impress upon the members of this Association the importance of this work from a practical standpoint.

LIFE ESTATE—PARTITION.

In re FRUTCHEY.

Supreme Court, Special Term, Livingston County, August 19, 1920.

183 N. Y. Supp. 786.

Proceedings for sale of real property held by life tenants and remaindermen, under Real Property Law, §§ 67-71, are maintainable only where one or more of the owners are unknown or under legal disability and the other owners expressly consent to the sale as required by section 70.

THOMPSON, J. The petitioner is one of the life tenants, and the respondents are persons having an estate, vested or contingent, in reversion or remainder, in the real estate which is here sought to be sold under the provision of sections 67, 68, 69, 70, and 71 of the Real Property Law (Consol. Laws, c. 50). The life tenant is anxious to have the property sold, alleging that it has become so unproductive,

together with other circumstances and conditions which have arisen subsequent to the devise, that it is for the best interests of all concerned that a sale of the premises should be had. He has endeavored to do so by partition, and has failed, and now invokes the aid of these provisions of the Real Property Law. The remaindermen resist the application, and charge that the life tenants have suffered the property to run down and have been guilty of waste, and ask that the motion be denied on the merits, without proof being taken or a reference being ordered.

This proceeding is against the policy of the law and may be said to be an attempt to accomplish by indirection that which the law by plain direction forbids. In cases of express trusts of either real or personal property, the statute expressly prohibits a transfer of the interest of the life beneficiary. Real Property Law, § 103.; Personal Property Law (Consol. Laws, c. 41) § 15. The courts strongly condemn such transactions. Metcalfe v. Union Trust Co., 181 N. Y. 39, 73 N. E. 498; Campbell v. Foster, 35 N. Y. 361, 371; Lent v. Howard, 89 N. Y. 169, 182. It is also a general rule that a tenant for life is not entitled to maintain partition against reversioners, remaindermen, or others having a future conditional interest. 20 R. C. L. 744; Brown v. Brown, 67 W. Va. 251, 67 S. E. 596, 28 L. R. A. (N. S.) 125, 21 Ann. Cas. 263. No more can a remainderman partition against the life tenant. 20 R. C. L. 747.

It cannot be the intent of these sections of the Real Property Law is to permit a life tenant to come directly from the defeat of his suit in partition and here obtain relief there denied. They do not contemplate the compelling of a sale of real property by those interested therein and not under legal disability, or section 70 would not require the making and filing of acknowledged consents of such persons, for which the law provides no substitute nor means of enforcement, and failing which it attaches only as consequence that the order shall not issue. The purpose of this statute is to make it possible to sell the shares and interests of unknown owners of remainders in realty in which there is a life tenancy in the circumstances mentioned in the statue and section 67, read with section 70, imposes the further condition that there can be no such sale or leasing without the consent of all capable of consenting.

These sections were passed by the Legislature in the exercise of its powers as parens patriae to authorize the sale of estates of infants, idiots, insane persons, and persons not known or not in being, who cannot act for themselves. 3 Washburn, Real Property (3d Ed.) 198; Metcalfe v. Union Trust Co., supra. They were not enacted to provide a remedy in one place expressly withheld in another.

The distinguishing characteristic of the proceeding is that there must be unknown remaindermen or reversioners before an application can be made. If, therefore, the remaindermen or reversioners are known, the application cannot lie; this upon the theory that, if known, they could act for themselves. Can it be claimed that this distinction gives cause or reason in the one instance to bind all of the parties to the proceeding, as well those not as those under disability, without their consent, while in the other it cannot? The statute does not so state, nor was it so intended. Section 70, in declaring the legal effect of the conveyance, particularly provides that it shall be valid and effectual against minors, lunatics, persons of unsound mind, habitual drunkards, and persons not in being, interested in the real estate, only, and it expressly requires the duly executed and acknowledged consents of all interested adult persons legally capable to be filed with the clerk, thus giving such document the character of a deed before the order shall be made.

NOTE—*Partition between Life Tenant and Remainderman.*—Upon different theories it has been held that there can be no partition between a life tenant and a remainderman. One theory is because the former has no interest in the land itself, but has the mere "use" thereof. Re Burroughs (1827) 13 N. J. L. 284. It also being said that the whole possession is only in one interest. Stevens v. Enders, 13 N. J. L. 271. Along this line it further has been said that as a remainderman neither is in, nor entitled to have present possession he cannot be made a defendant in a partition proceeding. Cromwell v. Hull, 97 N. Y. 209; Purdy v. Purdy, 46 N. Y. Supp. 215, 18 App. Div. 310; Seiders v. Giles, 141 Pa. 93, 21 Atl. 514.

Other cases go on the theory that the relations between the parties must be identical as regards the land sought to be partitioned. Newell v. Willworth, 30 R. I. 529, 76 Atl. 433, 19 Ann. Cas. 907.

In Wisconsin it is thought that though under the statute a remainderman may be made a party, yet his estate is not subject to partition. Plano Mfg. Co. v. Kindschi, 131 Wis. 590, 111 N. W. 680, 11 Ann. Cas. 1039. On this theory are many cases; e. g.: see Shafer v. Covey, 90 Kan. 588, 135 Pac. 676; Eversole v. Combs, 130 Ky. 82, 112 S. W. 1132; Field v. Leiter, 16 Wyo. 1, 90 Pac. 378, 125 Am. St. R. 997.

This kind of ruling comes out of the theory at common law that none but coparceners can compel partition, and, therefore, our statutes regarding partition are most strictly construed against extending what amounts to a derogation of common law. American cases as to this are

even stricter than are the English, as seems to be thought from rulings in the latter. Thus see Hobson v. Sherwood 4 Beav. 184, where it was held that one holding a life estate determinable on remarriage in one-fifth of an estate can call in the remaindermen to that extent.

But in America it has been held that a life tenant could maintain partition against the heirs to the fee. And in Indiana where a life tenant claimed an interest in one third of the property this could be valued as to proceeds where there was a sale. Swain v. Hardin, 64 Ind. 85. See also Shaw v. Beers, 84 Ind. 528; Tower v. Tower, 141 Ind. 223, 40 N. E. 747.

There are some cases where a life tenant is such and also an owner in fee in an estate subject to partition. This is not thought to prevent partition but the Court will settle the rights of all parties. Fitts v. Craddock, 144 Ala. 437, 39 So. 506, 113 Am. St. Rep. 53; Smith v. Andrew, 50 Ind. App. 602, 98 N. E. 734; Reinders v. Koppelman, 68 Mo. 482, 30 Am. Rep. 802; Striker v. Mott, 2 Paige 387, 22 Am. Dec. 646; Brevoort v. Brevoort, 70 N. Y. 136.

These cases but illustrate how the injustice in a technical rule may seem so clear it will not be adhered to.

That life estates may come in the usual course and that even other arrangements in the way of treating property as subject to contract and even the property as being leviable may work changes in character of ownership, ought to be thought as presenting reasons for not adhering to technicality under the common law—especially as rights of parties proceeded against in partition could not be materially affected. This is worse where, as for example one of several owners might be affected, so as to make partition impossible, where it formerly was possible.

C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISION BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION NO. 192.

Husband and Wife; Divorce; Separation; —Agreement to dismiss action for separation and bring action for divorce at request of guilty party, on his promise to confess past adultery and furnish proof; not necessarily improper.—A wife for adequate cause brings suit against her husband for a judicial separation. After its institution the husband's attorney, with the authority of his client, makes a proposition to the wife's attorney that if he will discontinue the separation action and bring action for divorce on the ground of the husband's adultery, the husband, who is willing to admit and confess an offense of adultery already committed, will make written confession and furnish the names of witnesses with knowledge of the fact to sustain the charge of adultery.

In the opinion of the Committee would it be improper for the two attorneys, with the consent of their clients, to enter into and carry out an agreement accordingly?

ANSWER NO. 192.

The Committee considers that attorneys should scrutinize with caution any offer by the adverse party to stipulate to furnish witnesses to the past offense charged, but it is of the opinion that it would not in itself be improper for the two attorneys, with the consent of their clients, in good faith to enter into and carry out the agreement described. This answer is based on the assumption that the question arises in a jurisdiction by whose law the agreement would not be deemed collusive. If the agreement were collusive as a matter of law, it would, of course, be improper.

While thus not condemning the proposed agreement, the Committee repeats its opinion that in every case of this character each attorney should satisfy himself of his client's good faith, and of the absence of collusion; and that since the State has an interest in actions for divorce which should be supervised by the Court, the agreement or stipulation should be in writing and should be disclosed to the Court in the divorce action, in order that the Court may be put on notice of all the circumstances and make such inquiries as those circumstances may suggest—concerning, for example, the good faith of the parties, the absence of collusion, the credibility of the witnesses, and the weight that should be given to the evidence. (See Question and Answer 163 suggesting special circumstances where an agreement would be improper.)

CHIEF JUSTICE WINSLOW OF WISCONSIN —AN IDEAL JUDGE.

We publish very few obituaries; not because we are not interested in the biographies of the great men of the bar but because of our announced purpose to provide our subscribers with a newspaper of the law. But on rare occasions, such as this, we depart from a strict observance of this rule to note the elements of strength in the life of some lawyer or judge of outstanding character.

Chief Justice John B. Winslow of Wisconsin was one of those giants which every generation produces. For thirty years he served as a Justice of the Supreme Court of Wisconsin and set an example of the high performance of judicial duties which will adorn the annals of American jurisprudence for many years to come.

The learned Chief Justice died in the City of Madison July 13, 1920, and from the time of his appointment to the Supreme Bench until the date of his death, he participated in the decision of over ten thousand cases and his decisions are published in ninety-one volumes of the Wisconsin reports. These opinions are models of brevity and learning, a combination so rare as to be noteworthy. It has not infrequently been contended that learning and thoroughness is inconsistent with brevity, but Justice Winslow's opinions proved the contrary. These opinions, in spite of their brevity and conciseness, are very readable and disclose a mastery of English composition which in itself was one of the charming attainments of the late Chief Justice.

Among lawyers he was a good fellow and loved by everyone. The writer met him at several meetings of the American Bar Association and with many others had become one of his charmed admirers. It was a pleasure to have him in a group; his strong personality and bright intellect always made him the dominant figure. He was a progressive thinker and could be counted on to support every worthy proposition for the reform of the law or of legal procedure. His chief delight was to take a shot at the technicalities of the law and when he could bring down one of those old birds, he was as happy as a school boy. One of the most beautiful tributes to Judge Winslow's character was paid by his associate on the Wisconsin Supreme Bench, Hon. R. D. Marshall. Judge Marshall said:

"The passing of Chief Justice Winslow means a great loss to the State of Wisconsin. It was my privilege to serve with him as an Associate Justice of the supreme court for well nigh a quarter of a century. He was certainly a model judicial officer. His controlling thought in every controversy was to discover the right and to vindicate it with as little delay and burden, as regards public and private expense, as possible. He did much to free the administration of justice from any legitimate criticism that it was characterized by technical hindrances. All such, attempted or supposed obstructions to the speedy, economical vindication of right, he easily and unhesitatingly swept aside, in his sturdy, direct and forceful course to the only legitimate objective of litigation.

"It is a serious thing to be the arbiter between one's fellow men. No functions are more exalted, no duties more grave. He who in the slightest degree, by partisanship or otherwise, dishonors its dignity, he who does not keep the ermine as white and spotless as virgin purity, is unworthy of the trust. Such were the characteristics of the distinguished subject of this tribute. 'His name is the synonym of justice, integrity, truth and honor,'—such were the virtues which illumined his character, 'radiant as the sunlight, shining as the stars.' Truly, no one could as fully appreciate this as a person who, in long service with the deceased Chief Justice came to admire and to love him for his sterling qualities of mind and heart."

A. H. ROBBINS.

CORRESPONDENCE.

NON-PAR STOCK WITHOUT A MINIMUM FACE VALUE DETERMINED BY LIMITATIONS SET ON THE IMPAIRMENT OF CAPITAL.

Editor, Central Law Journal:

In a recent issue of yours (Volume 90, p. 170) there is a discussion of non-par stock, but one rather important phase is not mentioned.

Mr. Victor Morawetz, with fine clarity, advocating non-par stock in 1913, said: "A joint-stock corporation necessarily must have some capital, and it must have shareholders, and for obvious reasons of policy it is desirable that the amount of capital which a corporation must have before incurring indebtedness and which may not be impaired by the declaration of dividends should be fixed definitely by its charter or articles of association" (Harvard Law Rev., Vol. 26, p. 729). Just what these "obvious reasons" are he does not there state, but that they underlie the very idea of corporate entity is indisputable. (Machen S. 1313; Morawetz S. 781).

Mr. Conyngton, in his handbook, aptly concludes his discussion of non-par stock—"experience only can show" its possibilities, yet we are sure it is a permanent innovation of great value even though subject to confusion.

Such confusion is exampled in the Delaware statute, as it appears in pamphlets. The Internal Revenue Department's Regulation 45, Article 1567 (Income Tax Service, Corporation Trust Company, Par. 1085) is evidently drafted with the Delaware statute or a similar statute in view. It first provides that non-

par stock issued under "statutes which require the corporation to fix in a certificate * * * or otherwise an amount of capital or an amount of stock issued which may not be impaired by the distribution of dividends, will for the purpose of this section (202) be deemed to have a par value representing an aliquot part of such amount * * *." Non-par stock under such statutes is what Mr. Morawetz advocated, but the Regulations add: "In case (if any) in which no such amount of capital or issued stock is so required, 'no-par-value stock' received in exchange will be regarded for purposes of this section as having in fact no par or face value, and consequently as having 'no greater aggregate par or face value' than the stock or securities exchanged therefor."

It is obvious that we thus have non-par statutes which give stockholders all the advantages of the corporate form yet require no statement of the amount of capital which may not be impaired, giving every corporate advantage to stockholders with no assurance to prospective creditors. It is not strange that the Corporation Journal says of Delaware: "Among the principal reasons for choice of this state are the absence of any provisions requiring a statement in the certificate of incorporation of an amount of capital with which the corporation would carry on business, which in other states is usually required * * *."

Where in this character of incorporation statute do we find "the amount of capital * * * which may not be impaired * * * fixed definitely," as required by the "obvious reasons" Mr. Morawetz had in mind? And why should there be this advantage to such an unsound type of corporate form in income tax regulations? It should not be hard to ascertain the real aliquot, or proportionate, value of such shares. A premium seems to be placed on the use of a law which is certainly unusual in its character.

Yours very truly,

JOHN A. CHAMBLISS.

Chattanooga, Tenn.

BOOKS RECEIVED.

The Proceedings of the Hague Peace Conferference. Translation of the Official Texts, prepared in the Division of International Law of the Carnegie Endowment for International Peace, under the supervision of James Brown Scott. The Conference of 1907. Volume I; Plenary Meetings of the Conference.

HUMOR OF THE LAW.

He lay by the roadside groaning and writhing with pain. A policeman came up and asked him what was the matter.

"I ate one—I ate one," moaned the sufferer.

The policeman was puzzled at first, but quickly grasped the situation.

"Poison," he muttered. All poisons have antidotes. Therefore it was necessary to discover which poison the sufferer had taken in order to administer the right antidote.

"Well, what did you eat?" gently inquired the constable.

"You blithering ass," retorted the sufferer, 'I didn't eat anything!"

"Then why did you say 'I ate one?' "

"Because I-81 is the number of the motor that knocked me down, you idiot!" yelled the victim.—*Albany Times.*

A lawyer draws up wills and sich,
And loosens legal snarls;
But what has made him really rich,
Is other people's quarrels.
The business man, too wise to scrap,
(For fighting wilts his collars)
Goes out and hires a lawyer chap
To fight about his dollars.

The lawyer never gets het up;
It doesn't help his case
To call some other man a pup,
Or smash him in the face.
And anyway his client's cause,
While near his heart, no doubt,
Is nothing that a man of laws
Need get chastised about.

And therefore, while the business man,
Enjoys serene repose,
The lawyer cheerfully will pan
His client's business foes.
He fights for his employer's pelf
Unstirred by rage or fury,
And, as he is unmoved himself,
He better moves the jury.

I have but little laid away,
But surely if I had
I always cheerfully would pay
A lawyer to get mad.
And while he fought my enemies,
And licked 'em fair and square,
I'd loll amid the blossoming trees,
And never know a care.

—*J. J. Montague in St. Louis Post-Dispatch.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Acknowledgment**—Interested Officer.—The attestation of a secretary of a corporation, in his capacity as a notary public, to a bill of sale in which the corporation is the grantee, is not sufficient to admit the bill of sale to record.—Citizens Trust Co. v. Butler, Ga., 103 S. E. 852.

2. **Adverse Possession** — Grazing Cattle. — Where the land in controversy was useful only for grazing purposes, and was part of an inclosed tract owned by several owners who grazed their cattle indiscriminately thereon, possession by a grantee of the tract in controversy by grazing his cattle on such tract under care of a herder to confine them to that tract was not constructive possession merely, but was actual.—O'Banion v. Simpson, Nev., 191 Pac. 1083.

3. **Animals**—Regulation.—To prescribe and enforce regulations suitable to foster the cattle-raising industry, in furtherance of the general welfare, are within the sovereign governmental powers of the state, to be exercised through enactments by the law-making department.—Whitaker v. Parsons, Fla., 86 So. 247.

4. **Attachment**—Service.—Service on the principal defendant and the only one against which judgment was asked held sufficient to authorize an attachment against the property of such defendant, although other defendants had not at the time been served.—Friede v. Azovsko Donskoi Kommercheske Bank, U. S. D. C., 266 Fed. 131.

5. **Attorney and Client**—Assignment.—Attorney for mortgagee, appointed trustee, has no authority to assign.—Shirk v. Cornell, Md., 111 Atl. 217.

6.——Contingent Fee.—Where an attorney's compensation is contingent on the successful prosecution of a suit, and he is discharged or prevented from performing the service, the measure of damages is not the agreed contingent fee, but reasonable compensation for the service actually rendered, and in the absence of evidence of such reasonable value there can be no recovery.—Ramey v. Graves, Wash., 191 Pac. 801.

7. **Auctions and Auctioneers**—Bid.—A bid may be made orally or in writing, by a wink or nod, or by any mode by which the bidder signifies his willingness and intention to bid a particular price.—State ex rel. Fitch v. State Board of School Land Com'rs of Wyoming, Wyo., 191 Pac. 1073.

8. **Banks and Banking**—Depositor.—Where a bank knew that creamery company's deposit was the proceeds of sale of butter and cheese for the creamery's patrons, and belonged to them, subject only to the creamery's claims for selling, etc., the bank had no right to charge the company's note to the company's apparent bank balance.—Edwards v. MacArteny, N. Y., 183 N. Y. S. 851.

9. **Boundaries** — Description.—Where a description of a tract of land in a state patent, if followed literally along sinuousities of named ridges, would not conform to the plat which accompanied the certificate of survey, nor include the correct acreage named, and the evidence showed that the surveyor ran and marked only the first two of nine boundary lines, and that he marked only three corners, locating the other lines by protraction, held, the boundaries would be located by following the two lines so marked, and the other seven lines by courses and distances, which would conform to the plat and include the right acreage, though the lines ro run would be a mile distant from one of such ridges.—Swift Coal & Timber Co. v. Sturgill, Ky., 223 S. W. 1090.

10. **Brokers**—Certificate of Stock. — Where Kansas City brokers, engaged to sell a certificate of stock, entered into negotiations with New York brokers, sending them the certificate indorsed in blank, and the New York brokers inserted their name in such blank, such brokers, not having disclosed their principals, bought the stock themselves.—Houston v. Welch, Mo., 223 S. W. 1076.

11. **Carriers of Goods**—Special Damages.—In an action against a common carrier for special damages on account of the loss of tomatoes because of delay in transporting crate material which was to be used in packing the tomatoes for shipment, the plaintiff should allege and prove that at the time of the shipment of the crate material the carrier had notice that special damages to the consignee would result from a negligent failure to transport the crate material with reasonable promptness.—Florida East Coast Ry. Co. v. Peters, Fla., 86 So. 217.

12. **Carriers of Live Stock**—Delay.—While one suing for damages for alleged negligent delay of an interstate shipment of sheep is required to not only show a delay, but also that the same was negligent, a delay shown under such circumstances as to raise even a slight inference of negligence is sufficient.—Moore v. Chicago, B. & Q. R. Co., Mo., 223 S. W. 1079.

13.——Interstate Commerce.—In an action for freight on an interstate shipment controlled by the Elkins Act (U. S. Comp. St. §§ 8597-8599), counterclaim for injuries to the shipment cannot be maintained in a state court, that being the ruling of the federal courts, despite plaintiff's contention that his personal interest as suitor in the state court would be inconvenienced, for the state public policy cannot run counter to the national.—Delaware, L. & W. R. Co. v. Henry Nuhs Co., N. J., 111 Atl. 223.

14. **Carriers of Passengers**—Protection by Carrier.—If a railroad's conductor participated in producing the belief of a passenger that he was being carried to execution as a German spy, such belief having been caused in the passenger's mind primarily by the acts and words of a train boy and another, he refused to protect the passenger, within the allegation of the passenger's complaint, by assuming a hostile attitude toward him, though no formal request for protection was made.—Alabama Great Southern R. Co. v. Hunt, Ala., 86 So. 98.

15.——Solicitation.—Entering into a contract with a railroad company, whereby exclusive right to solicit orders for baggage delivery, hack, taxicab, and omnibus service is given to one engaged in such business, is not unjust discrimination within the prohibition of Public Utilities Act, § 18, which refers only to what a public utility is under a legal obligation to do, a railroad not being under any obligation to permit any man in such business to solicit on its platforms at stations, in view of Railroad Act 1903, § 22.—Thompson's Express & Storage Co. v. Mount, N. J., 111 Atl. 173.

16. **Certiorari**—Writ of Review.—Where the certificate of the clerk of the inferior court showed that the orders sought to be reviewed had been vacated, and petitioner consented, the

proceeding for writ of review will be dismissed. —Vignaut v. Superior Court of Sacramento County, Cal., 191 Pac. 1112.

17. **Chattel Mortgages** — Crops. — Mortgagee, who took mortgage on crops to be grown during certain year with knowledge that mortgagor's lease was not valid as to such year, and that landlord had notified mortgagor that lease would terminate prior thereto, had no rights as against landlord, not being an innocent mortgagee.—Hinkhouse v. Wacker, Wash., 191 Pac. 881.

18.——Description.—A chattel mortgage of "all the furniture and fixtures contained in the building known as the Fred R. Hawn building, * * * together with all merchandise therein contained and more specifically described as follows, towit," etc., held to cover other property than that specifically described, as between the mortgagee and third persons, mortgage being given to secure the full purchase price of all property in the building.—Mott v. Payne, Wash., 191 Pac. 844.

19. **Collision**—Narrow Channel.—A vessel entering a narrow channel should approach and enter on the starboard side, leaving ample room for outcoming vessels to pass port to port, and vessels coming out should keep to the starboard side until well clear of the entrance: a "narrow channel" being defined as a body of water navigated up and down in opposite directions, which does not include harbor waters, with piers on each side, where the necessities of commerce require navigation in every conceivable direction.—The Klatawa, U. S. D. C., 266 Fed. 120.

20.——Privileged Vessel.—The fact that a vessel is privileged and entitled to hold her course does not excuse her from adopting such precautions as may be required by statute and necessary to prevent a collision.—The Admiral Watson, U. S. D. C., 266 Fed. 122.

21. **Constitutional Law**—Eminent Domain.—The power to determine the question of the necessity of taking property for a public use may be delegated by Congress to executive officers of the government. The finding by such officers on this question, made in the exercise of such delegated power, is not subject to review by the courts.—In re Condemnations for Improvement of Rouge River, U. S. D. C., 266 Fed. 105.

22.——Police Power.—All property is held subject to the police power, which power embraces regulations designed to promote the public health, morals or safety, and also those designed to promote the public convenience or general prosperity.—Ingham v. Brooks, Conn., 111 Atl. 209.

23. **Contracts**—Consideration.—A written instrument is presumptive evidence of a consideration, and the burden of showing a want of consideration lies with the party seeking to invalidate or avoid it.—Miller v. Oil Well Supply Co., Okla., 191 Pac. 1093.

24.——Rescission.—A right to rescind for fraud may be lost, after discovery of the fraud, by acts of affirmance, by acts or delay which evidence an abandonment of the right, or by acts of such a character, or delay so long, that to now assert the right would put the defendant to disadvantage. The question whether plaintiff lost his right of rescission in this case was one of fact for the jury.—Zeglin v. Tetzlaff, Minn., 178 N. W. 954.

25. **Corporations**—Trading Corporation. — A mutual agreement between all the stockholders of a trading corporation, that whenever a stockholder wishes to sell any of his stock the corporation shall have the exclusive right to purchase it for a period of 60 days after notice of the wish to sell, is valid and not an unlawful restriction on the power of alienation.—Model Clothing House et al. v. Dickinson, Minn., 178 N. W. 957.

26. **Courts**—Comity.—The rule of comity between courts of concurrent jurisdiction does not depend for application on whether any judgment that may be rendered in the case first instituted could be pleaded in bar in the second suit as a former adjudication, the proper test being whether or not the court in which the first suit is filed has acquired jurisdiction of the same parties and same subject-matter of controversy.—Ward v. Scarborough, Tex., 223 S. W. 1107.

27. **Covenants**—Benefit of Third Person.—It is not sufficient that the performance of a covenant may benefit a third person, but it must have been entered into for his benefit, or at least such benefit must be the direct result of performance, and so within the contemplation of the parties, in order to give such third person a right of action thereon.—Staff v. Bemis Realty Co., N. Y., 183 N. Y. Sup. 886.

28. **Criminal Law**—Corroboration.—While the testimony of an accomplice must be corroborated by other evidence, which directly connects the accused on trial with the perpetration of the crime, before such testimony will authorize a conviction of a felony, yet the law does not require that the corroborating evidence shall, in and of itself alone, be sufficient to warrant a verdict of guilty, or that the testimony of the accomplice shall be corroborated in every material particular. On the contrary, slight evidence that the crime was committed by both defendants, and identifying them with it, will corroborate the testimony of the accomplice and warrant a conviction.—Davis v. State, Ga., 103 S. E. 819.

29.——Discretion.—Pursuant to § 3381, Comp. Laws 1913, the district court may appoint, in its discretion, special counsel to assist the state's attorney in important cases. This power or discretion, however, should not be exercised where it appears that the officials whose duty it is to prosecute can properly represent the interests of the state.—State v. Stepp, N. D., 178 N. W. 951.

30.——Former Conviction.—Proceeding before a justice of the peace, in which a defendant, accused of striking certain person, pleaded guilty, under Rem. Code 1915, § 1929, and was sentenced to pay a nominal fine, without injured person being summoned to appear and testify, as required by §§ 1930, 1931, does not bar subsequent prosecution for assault; prior proceedings not having been conducted in accordance with mandatory requirements of statute.—State v. Collins, Wash., 191 Pac. 831.

31.——Similar Crimes.—Where it is competent for the prosecution to prove other crimes similar to the one charged, the evidence as to the other similar crimes must at least make out a prima facie case that such other crimes were committed by the defendant.—State v. Jones, Wyo., 191 Pac. 1075.

32.——Void Judgment.—A void judgment may lawfully be canceled on motion after notice, even after expiration of the term at which it was entered.—Mossew v. United States, U. S. C. C. A., 266 Fed. 18.

33. **Customs and Usages**—Trade Significance. —In suit to restrain the exhibition by respondents of a motion picture which plaintiff claimed to have the exclusive right to exhibit as a first run in the locality, allegations of the bill that a first-run exhibtion of a film in a locality has a trade significance as the exclusive right to exhibit it for the first time in that locality are sufficient to ingraft upon the contract a trade usage giving that term the significance alleged. —Alcazar Amusement Co. v. Mudd & Colley Amusement Co., Ala., 86 So. 209.

34. **Damages**—Stipulated.—Whether a fixed sum, stipulated to be paid for the nonperformance of a contract, enjoys the character of an unenforceable penalty on the one hand, or of liquidated damages on the other, depends on the purpose of the parties, and it is immaterial that the stipulated sum bears the designation "liquidated damages;" but the use of the word "forfeiture" or "penalty" is frequently regarded as controlling.—Ayers v. Houston, N. Y., 183 N. Y. Sup. 808.

35. **Deeds**—Habendum Clause.—Where a deed to a city granted the reversion, the habendum clause provision, "for the purposes of a public road of said city," has no greater force than if the grantee, in consideration of the conveyance, had promised to use the land for a highway, and must be construed as a covenant and not a condition, and the fee would not thereby be affected in the absence of a stipulation for forfeiture and re-entry, and upon abandonment of the road the property would not revert to grantor or his assigns.—Cooper v. Selig, Cal., 191 Pac. 983.

36.——Undue Influence.—The improper influence which the law denounces as "undue" does not consist in the faithful and loving per-

formance of filial offices, however far they extend beyond legal duty, nor can the affection and good will which comes unsought in return for such kindness be classed as improper or undue.—Hamlett v. McMillin, Mo., 223 S. W. 1069.

37. **Discovery**—Equity. — Equity is without jurisdiction of an action to recover royalties under a contract granting an exclusive territorial right or license under a patent because discovery is sought for the sole purpose of ascertaining the amount of royalty due; such evidence being available in a law action under Rev. St. § 724.—Loose v. Bellows Falls Pulp Plaster Co., U. S. C. C. A., 266 Fed. 81.

38. **Divorce**—Separate Property.—Under Rev. Laws, § 5843, authorizing the court to set apart such portion of the husband's property as may be necessary to support the wife, to whom a divorce is granted, the court had authority to require the husband to convey a life interest in the home, which was his separate property, and was to convey his remainder in escrow to secure a cash payment which the husband was ordered to make.—Greinstein v. Greinstein, Nev., 191 Pac. 1082.

39. **Easements**—Implied. — In determining whether there is an easement by implication, it is necessary to determine the extent of the use, the character and the surroundings of the property, the relationship of the parts separated to each other, and the reason for giving such construction to the conveyances as will make them effective according to what must have been the real intent of the parties.—Bailey v. Hennessey, Wash., 191 Pac. 863.

40. **Eminent Domain**—Estoppel.—Owner who has notice that railroad has entered upon his land and has proceeded to locate and construct its road thereon, and who allows railroad to spend large sums of money on improvements for such purpose, will be estopped from ousting the company by ejectment, if the company is willing to then make just compensation for the taking of land, but will not be estopped from claiming a just compensation; the payment thereof being a condition precedent to enjoining the ouster at law.—Patterson et al. v. Atlantic Coast Line R. Co., Ala., 86 So. 20.

41.——Public Use.—The use of property by the United States ,when necessary for the purpose of improving the navigability of a navigable river within its jurisdiction, is a public use, for which it is entitled to take such property by the power of eminent domain.—In re Condemnations for Improvement of Rouge River, U. S. D. C., 266 Fed. 105.

42. **Evidence**—Expert Testimony.—There is no distinction between expert testimony and evidence of other character as regards the weight to be given the testimony in a particular case, and, where there is a conflict between scientific testimony and testimony as to the facts, the jury or trial court must determine the relative weight thereof.—Rolland v. Porterfield, Cal., 191 Pac. 913.

43. **Extradition**—Jurisdiction. — The exercise of jurisdiction by a state to make an act committed outside its borders a crime against the state is one thing, but to assert that the party committing such act comes under the federal statute, and is to be delivered up as a fugitive from the justice of that state, is quite a different proposition.—Dawson v. Smith, Ga., 103 S. E. 847.

44. **Guaranty**—Acceptance.—Where a guaranty is made in response to an offer by the guarantee, its delivery to the guarantee completes the contract, and notice of its acceptance by the guarantee or an intention to act thereunder is not necessary.—Miller v. Oil Well Supply Co., Okla., 191 Pac. 1093.

45. **Homicide**—Manslaughter. — In a case where the indictment charges murder in the first degree, and the defendant pleads self-defense, if there is evidence in the case which would make the crime manslaughter, the court properly instructed upon manslaughter.—State v. Crosby, N. M., 191 Pac. 1079.

46.——Reckless Driving. — In a prosecution for manslaughter, by recklessly driving an automobile so as to throw deceased therefrom, it was not error to exclude testimony that similar accidents had occurred at the same place, since those accidents may have been the result of recklessness; but evidence as to the condition of the street and that there was a "right mean turn" there was properly admitted.—Sinclair v. United States, D. C., 265 Fed. 991.

47. **Husband and Wife**—Criminal Conversation.—"Criminal conversation" means "adultery," which is sexual intercourse by a man and woman, one of whom is married to another person.—Rash v. Pratt, Del., 111 Atl. 225.

48. **Injunction**—Equity.—The rule is that, except in peculiar or extraordinary cases, courts of equity have no jurisdiction to enforce a mere legal right, where there is a clear remedy at law.—Bass v. Alderman, Fla., 86 So. 244.

49.——Picketing.—Mass picketing by a combination of striking employes and others, for the purpose of forcing employers to adopt the policy of closed shop, accompanied by threats, abuse, domiciliary visits, and physical assaults on employes and potential employes, held unlawful and enjoined.—Langenberg Hat Co. v. United Cloth Hat and Cap Makers of North America, U. S. D. C., 266 Fed. 127.

50. **Insurance**—Consideration.—After the exact amount of a loss by fire has been definitely determined by the insured and an insurer that carries the entire risk, a partial payment, a receipt by insured in full satisfaction of the loss, and a claim asserted by the insurer, without any foundation in fact, law or equity that other insurance covering a proportion of the loss was in force when the fire occurred, do not constitute a consideration for a compromise and settlement, or for an accord and satisfaction, or require insured to refund or tender back the partial payment as a condition of recovering the balance of the loss.—Johnson v. St. Paul Fire & Marine Ins. Co., Neb., 178 N. W. 926.

51.——Proximate Cause.—Fire originating in the coal bunkers of a prize vessel, which despite all efforts to stop it progressed until in the judgment of the commanding officer the vessel could not be saved, held the proximate cause of the loss of cargo, within the terms of an insurance policy, although the ship was then taken into shallow water and sunk.—Hagemeyer Trading Co. v. St. Paul Fire & Marine Ins. Co., U. S. C. C. A., 266 Fed. 14.

52.——Suicide.—Rev. St. 1909, § 6945, providing that in suits on life policies it shall be no defense that the insured committed suicide in absence of showing that he contemplated suicide at time of application for policy, is not applicable to action on accident policy in case the insured committed suicide while sane, for in such case insured would not have been injured by an accident, and there would be no liability on the policy.—Trembley v. Fidelity & Casualty Co. of New York, Mo., 223 S. W. 887.

53. **Intoxicating Liquors** — Scienter.—That seller of intoxicating liquors knew or should have known that liquor was to be taken into other state and sold in violation of law did not preclude him from recovering on travelers' checks accepted in payment for liquor, on the ground that the transaction was against public policy.—Doonan v. Rossi, Wash., 191 Pac. 865.

54. **Landlord and Tenant**—Estoppel.—A tenant in possession, under a lease giving him the option to have an additional term, who represented to the landlord that he had no further use for the property, and would soon surrender possession, and knew that the landlord relying on such representation was negotiating a lease with another for the same property, is estopped to claim the right to a further lease.—Williams v. Stearns, Cal., 191 Pac. 965.

55. **Malicious Prosecution**—Abuse of Process. Malicious abuse of legal process is where a plaintiff in a civil proceeding willfully misapplies the process of a court in order to obtain an object which such a process is not intended by law to effect.—Farrar Lumber Co. v. Hogan, Ga., 103 S. E. 863.

56.——Clouding Title.—In an action for malicious prosecution of a civil action, the pendency of which, as claimed, prevented plaintiff from selling lots in a town site, he is not permitted to show generally depreciation in value of the lots between the time of commencement of the action and its termination, but is confined to actual damages sustained through loss of particular sales due to the clouding of his title.—Boland v. Ballaine, U. S. C. C. A., 266 Fed. 24.

57. **Master and Servant**—Assumption of Risk. —An employe assumes those risks and dangers which are ordinarily incident to the employment in which he voluntarily engages, but he

does not assume extraordinary risks incident thereto, or risks due to the negligence of his employer or of those for whose conduct the employer is responsible, until he becomes aware of such negligent act, defect, or disrepair, and of the risk arising therefrom, or unless the danger is so obvious that an ordinarily prudent person, under similar circumstances, would have observed and appreciated it.—Harness v. Baltimore & O. R. Co., W. Va., 103 S. E. 866.

58.——Dependency.—The issue of dependency being one of fact, the Industrial Commission's conclusions are like the verdict of a jury, and will not be interfered with, when supported by some substantial evidence, and if the commission erred in its findings of fact and conclusions, the Supreme Court cannot correct the error.—McVicar v. Industrial Commission of Utah, Utah, 191 Pac. 1089.

59.——Industrial Commission. — Injured employe, on making application to Industrial Commission for compensation under Workmen's Compensation Act, is bound to take notice of the rules and regulations of the commission affecting the application.—Varoukas v. Industrial Commission of Utah, Utah, 191 Pac. 1091.

60.——Master's Direction. — An experienced quarryman directed to go upon a dangerous ledge to remove a heavy stone with a crowbar, instead of a derrick, ordinarily used, because it was too far away, was not guilty of contributory negligence barring recovery for injuries by the sudden and unexpected slipping of the stone, when he attempted to remove it as directed, and he did not assume the risk arising from his master's negligence in failing to furnish him a derrick for such work.—Walsh v. Union Quarry & Construction Co., Mo., 223 S. W. 1082.

61.——Working Place.—A servant called by master to do work upon a scaffold is not required to make an inspection of the platform to ascertain whether it is reasonably safe before beginning his work, especially where the servant had no part in the erection of the scaffold.—Louisville & N. R. Co. v. Deering, Ky., 223 S. W. 1095.

62. **Mines and Minerals**—Oil and Gas.—Contrary to the ordinarily accepted idea, the word "minerals" is deemed in law to include oil and gas, so a conveyance of all of the minerals will carry with it the oil and gas.—Hudson & Collins v. McGuire, Ky., 223 S. W. 1101.

63.——Sole Benefit.—Location of an oil placer mining claim in the names of a number of the locator's family and seven of his neighbors, who knew nothing of the location and refused to ratify it, but conveyed their interest without consideration to the members of locator's family, who later conveyed to him, held to have been in effect for his sole benefit, and invalid.—United States v. Chanslor-Canfield Midway Oil Co., U. S. D. C., 266 Fed. 142.

64. **Mortgages** — Junior Incumbrancer. — A mortgagee cannot be compelled by the mortgagor to assign the mortgage, but can only be required to release or discharge the same, for even a junior incumbrancer redeeming can only demand that the mortgage be delivered uncancanceled.—Shirk v. Cornell, Md., 111 Atl. 217.

65. **Negligence**—Comparative Negligence. — Under the common law, the rule of comparative negligence did not obtain, and any negligence on the part of the plaintiff which, taken in connection with the negligence of the defendant, contributed to the proximate cause of the injury would bar a recovery. Under that rule the degrees of the plaintiff's negligence were not considered, but "slight negligence" was taken to mean "a slight want of ordinary care."—Hines, Director General of Railroads v. Evitt, Ga., 103 S. E. 865.

66.——Contributory Negligence.—Contributory negligence is a question for the jury, unless the evidence so plainly and clearly establishes such negligence that no reasonable man could come to any other conclusion.—Martel v. White Mills, N. H., 111 Atl. 237.

67.——Invitee.—Where a landowner's agent invites a prospective purchaser without warning onto a rotten porch, which falls, the landowner is liable for the injury.—Bonello v. Powell, Mo., 223 S. W. 1075.

68. **Patents**—Anticipation.—A process patent can only be anticipated by a similar process, not by a prior apparatus similar to that used by patentee to effectuate his process.—Window Glass Mach. Co. v. Smethport Window Glass Co., U. S. D. C., 266 Fed. 85.

69.——License.—Unless a grant by owner of patent transfers right to make, use and sell, grant creates a license only; but an unrestricted grant by a patentee of the right to manufacture the patented article carries with it the right to use and sell the articles so manufactured.—Curtiss Aeroplane & Motor Corporation v. United Aircraft Engineering Corporation, U. S. C. C. A., 266 Fed. 71.

70.——License.—That the right to manufacture a patented article under a license contract was transferred to a corporation does not render the corporation liable for royalties under the contract, in the absence of proof that it assumed such liability.—Loose v. Bellows Falls Pulp Plaster Co., U. S. C. C. A., 266 Fed. 81.

71. **Receivers**—Holding Corporation. — The revenue from fares collected from a street railway system in the hands of the receiver of the holding corporation is payable for expenses of maintaining the system as a unit, including the payment of rentals to subsidiary corporations necessary to prevent foreclosure of mortgages on the property of such corporation.—Pennsylvania Co. for Ins. on Lives and Granting Annuities v. Philadelphia Co., U. S. C. C. A., 266 Fed. 1.

72. **Sales**—Cancellation. — Where the buyer failed to make payments when due under contract for sale, deliveries to extend over a considerable time, and the defaults were substantial, the seller may, there being no modification or agreement for delay in delivery, cancel the contract and refuse further deliveries.—Swinehart Tire & Rubber Co. v. William Whitman Co., U. S. C. C. A., 266 Fed. 45.

73.——Unexecuted Contract. — Seller's parol agreement to make further deliveries under unexecuted contract and to forbear from canceling the contract for buyer's default in making payments for past deliveries, in consideration or buyer furnishing security guaranteeing payment for deliveries up to specified amount, held valid.—Clements v. Cook, Wash., 191 Pac. 874.

74. **Subrogation**—Guaranty.—A guarantor of the bonds of subsidiary street railways companies, which had under its guaranty advanced sums to pay the interest on the bonds, is not entitled to repayment of a part of the sums advanced, from the receiver of a holding corporation, under any theory, legal or equitable, before it becomes entitled to subrogation to the rights of the subsidiary corporation.—Pennsylvania Co. for Ins. on Lives and Granting Annuities v. Philadelphia Co., U. S. C. C. A., 266 Fed. 1.

75. **Taxation**—Domicile.—Complainant, domiciled in Massachusetts, where he owned two residences, occupied by himself and family alternately in summer and winter, and who also owned an undivided interest, with his brothers, in the former home of his deceased father in Newport, R. I., where he and family occasionally spent a few weeks in summer, by announcing his intention to change his domicile to Rhode Island, removing his securities there, going there on tax day in Massachusetts each year, and voting and paying his personal taxes there, but without any actual change of residence, his houses in Massachusetts being kept open and occupied as before, and his family being in Newport but three weeks in the ensuing two years, held not to have effected a bona fide change of domicile, which exempted him from income tax in Massachusetts.—Agassiz v. Trefry, U. S. C. C. A., 266 Fed. 10.

76. **Tenancy in Common**—Entire Interest.—Where one cotenant executes a deed purporting to convey entire interest in the property described by metes and bounds, and the grantee takes exclusive possession of the property under the deed, there is an ouster of the other tenants, which at the expiration of the statutory period will ripen into title to the entire premises.—O'Banion v. Simpson, Nev., 191 Pac. 1083.

77. **Trover and Conversion**—Ownership. — Where there is a taking of chattels with intent to exercise over them an ownership inconsistent with the real owner's right of possession, there is a conversion.—West Yellow Pine Co. v. Stephens, Fla., 86 So. 241.